

**Trial on Merits
June 6, 2017**

**REPORTER'S RECORD
VOLUME 3 OF 5 VOLUMES
TRIAL COURT CAUSE NO. CR2016-233
COURT OF APPEALS NO. 01-17-00534-CR**

4 STATE OF TEXAS) IN THE DISTRICT COURT
5 VS.) COMAL COUNTY, TEXAS
6 DEREK DALE PORTER) 207TH JUDICIAL DISTRICT

TRIAL ON MERITS

13 On the 6th day of June, 2017, the following
14 proceedings came on to be held in the above-titled and
15 numbered cause before the Honorable Dibrell W. Waldrip,
16 Judge Presiding, held in New Braunfels, Comal County,
17 Texas.

18 Proceedings reported by computerized stenotype
19 machine.

Trial on Merits
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1 APPEARANCES

2 Counsel for the State of Texas:

3 Ms. Jacqueline H. Doyer
4 SBOT NO. 24086703
5 Ms. Kiera L. Kilday
6 SBOT NO. 24090854
7 Comal County District Attorney's Office
8 150 N. Seguin Street
Suite 307
New Braunfels, Texas 78130
Telephone: 830-221-1300
Fax: 830-620-5599

9

10 Counsel for the Defendant:

11 Mr. James E. Millan
12 SBOT NO. 24031569
Law Office of James E. Millan, PLLC
13 816 Camaron, Suite 1.15
San Antonio, Texas 78212
Telephone: 210-223-1060
14 Fax: 210-738-1000

15 Mr. Edwin Matias
16 SBOT NO. 13196700
17 Attorney at Law
8600 Wurzbach Road
Suite 1000
18 San Antonio, Texas 78240
Telephone: 210-331-3132
19 Fax: 210-568-4518

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EXHIBITS OFFERED BY STATE			
EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
20	Hays County jail records	11 v3	11 v3
21	CR-11-0347 Plea bargain agreement redacted	24 v3	24 v3
21-A	CR-11-0347 Plea bargain agreement unredacted	24 v3	24 v3
22	CR-11-348 Plea bargain agreement redacted	24 v3	24 v3
22-A	CR-11-348 Plea bargain agreement unredacted	24 v3	24 v3
23	Ten-print card	14 v3	14 v3
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1 P R O C E E D I N G S

2 (Open court, defendant present, no jury)

3 THE COURT: Are y'all ready to proceed?

4 MR. MILLAN: Yes, sir.

5 MS. DOYER: Yes, Your Honor.

6 I've got two witnesses, one of which is
7 still -- Ronnie Womack is working on something over at
8 the sheriff's office, so there might be a delay on that.
9 I told him to get here as soon as possible. I'm told
10 there's only one of him now. Where there were two
11 evidence techs, he's now down to the only person and
12 someone is coming to pick up evidence this morning. I'm
13 doing my best.

14 THE COURT: Okay. Well, where is -- who
15 is it that's coming?

16 MS. DOYER: Ronnie Womack.

17 THE COURT: I know, but you said someone
18 is coming for evidence.

19 MS. DOYER: I don't -- they said a diver.
20 I don't know what that means. It was in relation to
21 another case.

22 THE COURT: Well, the jurors may take
23 precedence over the diver.

24 MS. DOYER: I've communicated that
25 information.

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1 THE COURT: We're not going to sit here
2 all day long --

3 MS. DOYER: Yes, sir.

4 THE COURT: -- waiting on -- is there any
5 objection, Mr. Millan, if we had to just proceed and
6 take him out of order or -- and if there is, that's
7 fine. It's understandable. I don't know if you have
8 witnesses, so that's my point.

9 MR. MILLAN: I'd rather wait to hear
10 everything in order. I don't want to be doing stuff out
11 of order, Judge.

12 THE COURT: Okay. Well, who is the first
13 witness?

14 MS. DOYER: A records custodian. If I
15 could get a minute, I'm going to talk to Ronnie.

16 THE COURT: Okay. So my point is that
17 person is probably not going to take too long.

18 MS. DOYER: The two I have won't take
19 long.

20 THE COURT: Chances are he can be back by
21 9:30 if he'll just get here rather than keeping the jury
22 waiting.

23 MS. DOYER: He said 30 minutes is his best
24 estimate -- the best he can do is 30 minutes.

25 THE COURT: Find out who it is, who he's

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1 waiting on.

2 MS. DOYER: I'm sorry, sir?

3 THE COURT: Can you find out who it is
4 that he's waiting on?

5 MS. DOYER: Yes, sir.

6 (Off the record)

7 (Open court, defendant present, no jury)

8 MS. DOYER: I'm still waiting. Amber said
9 she's doing her best to get him here.

10 THE COURT: If they had a murder last
11 night and he's collecting evidence, that's one thing.
12 Do you understand what I'm saying?

13 MS. DOYER: Yes, sir.

14 THE COURT: But if this is just something
15 that somebody is coming to pick something up --

16 MS. DOYER: What I heard is there's a
17 diver coming to pick up some type of computer equipment
18 and that there were two murders last week. I don't
19 know.

20 THE COURT: I mean -- okay. It's not
21 emergent. It's not happening right now. It's something
22 from last week.

23 MS. DOYER: Your Honor, while we're
24 waiting, if we move into the punishment phase for
25 scheduling purposes, we're prepared to go straight into

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1 punishment. Would you want us to have people lined up
2 or would you want us to wait as far as if you want to do
3 a PSI?

4 THE COURT: We can probably do it either
5 way, it doesn't matter, so as to prevent having to -- if
6 there are witnesses anticipated that have already been
7 subpoenaed --

8 MS. DOYER: Yes, sir.

9 THE COURT: -- unless you're going to
10 leave them under the same subpoena and we can make sure
11 they understand the case has not been reset.

12 MS. DOYER: I don't know that we'll get
13 another block of time sufficient to present the
14 punishment case, if we reset it.

15 THE COURT: Okay. Bring them on in.

16 (Jury enters courtroom)

17 THE COURT: All right. Thank you.
18 Everybody can be seated.

19 Next witness, please?

20 MS. DOYER: State calls Natalie Ramirez.

21 THE COURT: Let me get you to raise your
22 right hand.

23 (Witness sworn)

24 THE COURT: Thank you. You may be seated.
25 If you would just make sure you get close up to that

NATALIE RAMIREZ - JUNE 6, 2017
Direct Examination by Ms. Doyer

1 mike.

2 You may proceed.

3 NATALIE RAMIREZ,

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. DOYER:

7 Q. Ms. Ramirez, would you please state your name
8 for the record.

9 A. Natalie Ramirez.

10 Q. And, Ms. Ramirez, how are you presently
11 employed?

12 A. I am employed with the Hays County Sheriff's
13 Office.

14 Q. And what is your current position with the Hays
15 County Sheriff's Office?

16 A. Custodian of jail records.

17 Q. What are some of the duties that are associated
18 with that position? [stop]

19 A. Maintaining the fingerprints, making reports,
20 any incarceration paperwork that is processed for the
21 jail, booking information.

22 Q. Those records that are made -- say, for
23 example, a jailing record, are those records made at or
24 near the time of incarceration?

25 A. Yes, ma'am.

NATALIE RAMIREZ - JUNE 6, 2017
Direct Examination by Ms. Doyer

1 Q. Are those records made by someone with personal
2 knowledge of the events?

3 A. Yes.

4 Q. And are those records kept in the ordinary
5 course of Hays County jail's business?

6 A. Yes.

7 Q. Did you bring a record here with you today
8 related to an arrest of Derek Dale Porter on November
9 23rd, 2010?

10 A. Yes, ma'am.

11 MS. DOYER: May I approach the witness,
12 Your Honor?

13 THE COURT: Yes, ma'am.

14 Q. (BY MS. DOYER) This item that I've just marked
15 as State's Exhibit 20, can you describe what's contained
16 in that record?

17 A. Yes. The first page is a booking report that
18 identifies the individual's first, middle name, last
19 name, identifying information and states the date
20 booked, the date of arrest, emergency contact
21 information.

22 Q. And the next page of that record?

23 A. Would be the fingerprints from the booking
24 process of when he was arrested and brought in.

25 Q. Is this a true and accurate representation of

RONNIE WOMACK - JUNE 6, 2017
Direct Examination by Ms.Doyer

1 the records that are maintained by the Hays County
2 Sheriff's Office?

3 A. Yes, ma'am.

4 MS. DOYER: State offers
5 State's Exhibit 20.

6 MR. MILLAN: No objection.

7 THE COURT: It's admitted.

8 MS. DOYER: Pass the witness.

9 MR. MILLAN: No questions.

10 THE COURT: Okay. Thank you. You may
11 step down.

12 MS. DOYER: State calls Detective Ronnie
13 Womack.

14 Your Honor, may this witness be excused?

15 THE COURT: You may.

16 MS. DOYER: Thank you.

17 (Witness sworn)

18 THE COURT: Thank you.

19 RONNIE WOMACK,

20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. DOYER:

23 Q. Detective Womack, could you please state your
24 name for the record.

25 A. Ron Womack, W-O-M-A-C-K.

RONNIE WOMACK - JUNE 6, 2017
Direct Examination by Ms.Doyer

1 Q. And, Detective Womack, how are you presently
2 employed?

3 A. I'm a sergeant detective with the Comal County
4 Sheriff's Office.

5 Q. And what are some of the duties associated with
6 your current position, sir?

7 A. My current position mainly involves fingerprint
8 processing, fingerprint work and identification.

9 Q. Do you go through any special training or
10 education to be able to hold that position?

11 A. I've had basic, immediate, advanced and then
12 ultra advanced through some of the best instructors in
13 the world. I've been doing it for about 22 years.

14 Q. Can you describe generally when a fingerprint
15 is.

16 A. Well, a fingerprint -- what I'm doing today is
17 a known -- what we call an inked or a live scan with
18 just like a scanner. That's basically what it is.

19 Q. And how do you use a fingerprint to conduct a
20 comparison and subsequently an identification?

21 A. When I have a fingerprint, I always consider it
22 to be an unknown until I look at the ten-print card or a
23 suspect or a defendant. I take that -- I take that
24 fingerprint and I start evaluating it first for -- for a
25 pattern. And then if the pattern matches, then I go

RONNIE WOMACK - JUNE 6, 2017
Direct Examination by Ms.Doyer

1 from there to second-level detail, which is any ridges,
2 bifurcations on the fingerprint. We map that out.
3 Particularly -- ten-print cards are very easy to do
4 because of the information that is involved in a
5 ten-print versus working a crime-scene latent with only
6 maybe seven, eight, nine second-level details.

7 Q. Did you conduct an analysis of fingerprints in
8 this particular case?

9 A. Yes, ma'am.

10 MS. DOYER: May I approach the witness,
11 Your Honor?

12 THE COURT: Yes, ma'am.

13 Q. (BY MS. DOYER) Detective Womack, I'm going to
14 show you what I've marked as State's Exhibit 23. Do you
15 recognize this?

16 A. Yes, ma'am.

17 Q. What is this?

18 A. This is a known live scan ten print from
19 Mr. Derek Porter taken yesterday in the jail.

20 Q. The individual whose prints you took on -- on
21 June 5th, 2017, do you see him here in the courtroom
22 today?

23 A. Yes. It's the gentleman with the blue shirt.

24 MS. DOYER: For the record, the witness
25 has identified the defendant.

RONNIE WOMACK - JUNE 6, 2017
Direct Examination by Ms.Doyer

1 Q. (BY MS. DOYER) Can you describe what a live
2 scan is?

3 A. If any of you have ever used a Xerox machine, a
4 live scan is an updated, more technical version of that.
5 It's usually set at 500 dpi, dots per square inch. It
6 captures all of the information here which is regulated
7 by the FBI. The FBI signs off on those live scan
8 machines to be regulated and approved by them. The live
9 scan system that we use is approved by the FBI.

10 Q. I'll take that for a moment.

11 MS. DOYER: State offers State's
12 Exhibit 23.

13 MR. MILLAN: No objection.

14 THE COURT: It's admitted.

15 Q. (BY MS. DOYER) Detective Sergeant Womack, did
16 you compare these prints to another set of prints of a
17 Derek Porter?

18 A. Ma'am?

19 Q. Did you compare State's Exhibit 23, the prints
20 that you took, to another set of prints?

21 A. Yes, ma'am.

22 MS. DOYER: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25 Q. (BY MS. DOYER) I'm handing you back

1 State's Exhibit 23. I'm going to show you what's been
2 admitted as State's Exhibit 20. The prints that are
3 State's Exhibit 20, are those the same prints that you
4 used to conduct the comparison?

5 A. That is correct, ma'am.

6 Q. Okay. Looking at State's Exhibit 20, what is
7 the date of arrest for that particular offense?

8 A. Give me a moment here. Let's see. It shows to
9 be 11-23-2010.

10 Q. Okay. And does it identify the individual who
11 was printed on that date?

12 A. Yes, ma'am.

13 Q. Okay. And who is that individual?

14 A. It shows to be a Derek Dale Porter.

15 Q. Now, using those two prints -- two sets of
16 prints, Detective Womack, did you conduct an analysis to
17 see if there was a match?

18 A. Yes, ma'am, I did.

19 Q. Okay. And can you describe how you went about
20 that process?

21 A. I use a special software program on a -- on a
22 24-inch ultra screen and I -- you'll see the old school
23 ways where they use glasses. I use a screen. And I
24 have state-of-the-art equipment, state-of-the-art
25 software. So what I did is I scanned the -- the

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1 known -- and I still consider this to be an unknown.
2 Even though his name is on it, it's still an unknown to
3 me. I know what this card is because I watched him
4 print it.

5 So what we do is we do the -- we conduct
6 the comparison. We have ten digits that we deal with.
7 On those ten digits, the tips of the fingers -- there's
8 150 to 350 second-level details, excluding third-level
9 detail. These are basic prints to work. They're some
10 of the easiest things to do in identification, and it is
11 a match.

12 Q. That was my next question. In your opinion,
13 Detective Womack, are the prints from State's Exhibit 23
14 the same individual contained in State's Exhibit 20?

15 A. That is correct, ma'am.

16 MS. DOYER: May I approach again,
17 Your Honor?

18 THE COURT: Yes, ma'am.

19 Q. (BY MS. DOYER) Detective Womack, I'm going to
20 show you what I've marked as State's Exhibits 21 and 22.
21 Without reading anything, could you flip through those
22 and tell me generally what they are?

23 A. It shows to be a plea bargain.

24 Q. Okay. These court documents related to -- and
25 if you look back at the first page of both -- an offense

1 occurring on November 23rd, 2010.

2 A. I see that, yes, ma'am. That is correct.

3 Q. Okay. Thank you.

4 MS. DOYER: I'll pass the witness.

5 MR. MILLAN: No questions.

6 MS. DOYER: May this witness be excused?

7 THE COURT: You may. Thank you.

8 MS. DOYER: May we approach briefly,

9 Your Honor?

10 THE COURT: Yes, ma'am.

11 (At the bench, on the record)

12 MS. DOYER: I'm anticipating an objection
13 because of this here, so I just thought I'd take this up
14 now.

15 THE COURT: I'm presuming -- what is this
16 that's marked as State's Exhibit 22?

17 MS. DOYER: 21 and 22.

18 THE COURT: Okay.

19 MS. DOYER: And this was what I was
20 concerned about here.

21 MR. MILLAN: Yeah. I'm concerned about it
22 as well. I mean, I don't have a problem if it's somehow
23 redacted.

24 THE COURT: So that's a big difference
25 in --

1 MS. DOYER: Let me see. Are you objecting
2 to it?

3 MR. MILLAN: My thing is, I'm concerned
4 that even if it's redacted, there's going to be -- it's
5 going to look like something was scratched out.

6 MS. DOYER: Well, I can -- what I can do
7 is just show it to the probation officer and then we can
8 only introduce the judgments.

9 THE COURT: Would it just -- be
10 permissible just to -- just to introduce those two
11 pages?

12 MS. DOYER: I was thinking I'd just pull
13 off the front page.

14 THE COURT: That, too.

15 MR. MILLAN: Okay.

16 THE COURT: Okay. You can just -- those
17 stickers go -- I mean, will they come off of there or do
18 we need to reprint the stickers?

19 MS. DOYER: Yeah, probably reprint them.

20 THE COURT: I don't know. And then --
21 just so the record -- the record is clear, too, if you
22 want to, just -- so the record reflects what -- what
23 we're removing, it -- it can be either just a court
24 exhibit --

25 MS. DOYER: Sure.

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Direct Examination by Ms. Kilday

1 THE COURT: -- the front page of each --

2 MR. MILLAN: Uh-huh.

3 THE COURT: -- and that you're objecting
4 to -- as I'm understanding looking at the dates, it's
5 not real clear, but yet a different potential family
6 violence enhancement. So what will go back to the jury
7 is just the judgment package without reference to that.

8 (At the bench, concluded)

9 MS. KILDAY: State calls Oliver Meek.

10 THE COURT: Let me get you to raise your
11 right hand.

12 (Witness sworn)

13 THE COURT: Thank you.

14 OLIVER MEEK,

15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. KILDAY:

18 Q. Good morning. Could you please spell your name
19 out for the record.

20 A. Oliver Kent Meek, O-L-I-V-E-R, K-E-N-T,
21 M-E-E-K.

22 Q. Mr. Meek, where are you currently employed?

23 A. City of Corpus Christi.

24 Q. How long have you worked there?

25 A. Three years.

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Direct Examination by Ms. Kilday

1 Q. Where did you work prior to working for the
2 City of Corpus Christi?

3 A. Nueces County.

4 Q. And prior to working for Nueces County?

5 A. Hays County.

6 Q. How long did you work for Hays County?

7 A. Eight years.

8 Q. Do you remember the time span or -- or were you
9 working for Hays County around 2011?

10 A. Yes.

11 Q. What was your position?

12 A. Adult probation officer.

13 Q. And in your capacity as an adult probation
14 officer, did you have the opportunity to supervise an
15 individual named Derek Dale Porter?

16 A. I did.

17 Q. Do you recognize Mr. Porter in the courtroom
18 here today?

19 A. I do.

20 Q. Please identify him and a piece of clothing
21 that he's wearing.

22 A. He's sitting adjacent wearing a light blue
23 button-down shirt.

24 MS. KILDAY: Let the record reflect that
25 the witness has identified the defendant.

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Direct Examination by Ms. Kilday

1 Permission to approach the witness?

2 THE COURT: You may.

3 Q. (BY MS. KILDAY) Mr. Meek, I'm handing you
4 what's been marked as State's Exhibit 21. Do you
5 recognize this?

6 A. I do.

7 Q. Okay. So we're going to speak in very limit
8 purposes for it. What's the cause number that this is
9 related to?

10 A. CR-11-0347.

11 Q. And what is the case name, state versus who?

12 A. Derek Dale Porter.

13 Q. You can please tell me the offense date that is
14 listed in this information?

15 A. 23rd of November, 2010.

16 Q. And who is the -- the listed complaining
17 witness or victim in this offense report or information?

18 A. LaToya Branecky.

19 Q. Secondly, I'm going to turn your attention to
20 what's marked as State's Exhibit 21-A. Do you recognize
21 this?

22 A. I do.

23 Q. What is it?

24 A. It's a plea bargain agreement.

25 Q. And now we're going to look through -- do you

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Direct Examination by Ms. Kilday

1 recognize this page here?

2 A. Yes, I do.

3 Q. What was the final date the judgment was
4 entered for this plea bargain?

5 A. It was filed on February 3rd of 2012. The
6 judgment was dated February 2nd of 2012.

7 Q. And this was a -- this is a judgment of
8 conviction that we're referring to?

9 A. Correct.

10 Q. And do you see in the header what court this
11 was in?

12 A. 22nd District Court. I believe that was Judge
13 Ramsay at the time.

14 Q. Of Hays County?

15 A. Of Hays County.

16 Q. Next I'm going to turn your attention here to
17 State's Exhibit 22. What's the cause number in
18 State's Exhibit 22?

19 A. CR-11-0348.

20 Q. Same -- what's the case style, State versus
21 who?

22 A. Derek Dale Porter.

23 Q. What is the offense listed in this information?

24 A. Assault family violence, strangulation, repeat
25 offender.

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1 Q. And who is the victim that's listed in -- in
2 the offense -- the information?

3 A. It's the same as the previous cause, LaToya
4 Branecky.

5 Q. And the offense date as listed in the
6 information?

7 A. November 23rd of 2010.

8 Q. I'm going to turn your attention to
9 State's Exhibit 22-A. Do you recognize it?

10 A. Yes.

11 Q. Do you recognize this page that I'm showing
12 you?

13 A. Yes, I do.

14 Q. What are we looking at here?

15 A. The judgment for Cause CR-11-038. It's the
16 judgment of conviction.

17 Q. And what's the offense he was convicted for?

18 A. Lesser-included offense of assault family
19 violence.

20 Q. What was the date the judgment was entered on?

21 A. February 2nd of 2012.

22 Q. And the Court that this judgment was entered
23 into?

24 A. It was also the 22nd District Court of Hays
25 County.

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1 Q. Finally, you had the opportunity to supervise
2 the defendant for these two cause numbers?

3 A. I did.

4 Q. The -- the same -- the individual that you
5 supervised, is it the same individual that you see here
6 in the courtroom today?

7 A. Yes, it is.

8 MS. KILDAY: State offers Exhibits 21-A
9 and 22-A.

10 THE COURT: Any objection to the -- to the
11 As?

12 MR. MILLAN: No objection to the As,
13 Your Honor.

14 THE COURT: Okay. Very good. They'll be
15 admitted.

MS. KILDAY: Pass the witness.

17 MR. MILLAN: No questions.

18 THE COURT: Thank you. You may step down.

19 MS. DOYER: May this witness be excused,
20 Your Honor.

THE COURT: Yes.

22 MS. DOYER: State rests.

23 THE COURT: Do you wish to make an
24 opening?

25 | MR. MILLAN: No, Your Honor. I'll go

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1 straight into testimony.

2 THE COURT: Okay.

3 MR. MILLAN: I'm going to call Gregory
4 McClure.

5 May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 (At the bench, on the record)

8 MR. MILLAN: The witnesses on call are all
9 under subpoena. They were called as State's witnesses,
10 but the State never called them. I'm calling Gregory
11 McClure, Gerry Nance and I'm re-calling Georganne
12 Shirley.

13 I've informed them so that they get the
14 people over here as quickly as they can. I couldn't
15 anticipate when they were going to --

16 THE COURT: Do we know where they're at?

17 MS. DOYER: I don't, no.

18 MR. MILLAN: They're working on it right
19 now.

20 (At the bench, concluded)

21 THE COURT: Ladies and gentlemen, some of
22 the witnesses that have been subpoenaed have apparently
23 decided to not be here at the present time. We're
24 working on it. We'll just take a short break.

25 (Jury leaves courtroom).

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1 THE COURT: Okay. Who is Greg McClure?

2 MR. MILLAN: He's the -- the officer who
3 transported Derek to -- he was one of the original
4 officers at the scene and he transported Mr. Porter to
5 the jail from the scene.

6 MS. DOYER: I have a concern about
7 re-calling Georganne. If it's just for the purposes of
8 impeachment, obviously I'm going to object to that.

9 MR. MILLAN: Judge, we can have a hearing
10 on that right now.

11 THE COURT: Okay. I mean, it's their case
12 in chief. They can call the witness.

13 And who is the -- the third witness?

14 MR. MILLAN: I'm sorry?

15 THE COURT: Who was the third witness?

16 MR. MILLAN: I said McClure, Nance and
17 Shirley.

18 THE COURT: Okay. Nance is the homeowner.

19 MR. MILLAN: Yes, sir.

20 THE COURT: Okay. I'm trying to recall.
21 I guess, have we been in contact with him?

22 MS. DOYER: He said it's going to take
23 about an hour and a half to get here.

24 The defense can rely on our subpoenas,
25 but -- I mean, I can't control when they want to call

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1 people. I mean they still have an obligation, if
2 they're going to call witnesses, to go to those efforts.
3 Ms. Hardcastle doesn't work for Mr. Millan.

4 MR. MILLAN: Judge, I'm entitled to rely
5 on the State's subpoenas.

6 MS. DOYER: On the subpoenas, but not on
7 our staff.

8 MR. MILLAN: Well, I'll calling people who
9 have been subpoenaed.

10 THE COURT: You might as well start
11 drafting some writs of attachment or something. I don't
12 know if you did convey to Mr. Millan how long you
13 thought this morning would be. We were -- everybody was
14 under the impression we were going to have a hearing
15 regarding some fact witnesses other than just records
16 custodian or probation officers or fingerprint people.

17 I'm not sure that anybody anticipated -- I
18 wasn't anticipating, you know, resting in 30 minutes
19 myself. So if that had been conveyed to Mr. Millan, I
20 don't know; but otherwise, he can't be ready either.

21 Where is --

22 MR. MILLAN: They said it's going to take
23 about an hour on Shirley.

24 THE COURT: She's at the jail, I presume?

25 MR. MILLAN: McClure, how long?

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1 MS. HARDCASTLE: I just got off the phone
2 with him. He said he's on his way, but I don't know.

3 THE COURT: They can bring her in her jail
4 clothes.

5 MS. HARDCASTLE: He lives in San Antonio.
6 I don't know if he's working today or not.

7 MR. MILLAN: Judge, I've requested a writ
8 of attachment, Your Honor, if the Court ordered one.
9 But in terms of drafting one, I --

10 THE COURT: I mean, the sheriff's office
11 is going to have to have something if we're going to
12 issue it to assist in gaining people's presence.

13 MR. MILLAN: Right. He's been served. I
14 made sure. We're working on a writ of attachment,
15 Your Honor.

16 THE COURT: Okay. I don't see that I have
17 any on this particular computer. I've had --

18 MR. MILLAN: He found one and we're going
19 to see if we can get it printed out over at the clerk's
20 office.

21 MS. DOYER: Is there some issue with
22 Georganne that we're going to need to take up that we
23 can just do now?

24 MR. MILLAN: That's fine.

25 MS. DOYER: I mean, I don't know.

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1 MR. MILLAN: I -- I told the Court I'm
2 ready -- Judge, if you're ready.

3 THE COURT: Sure. Defendant is present.

4 MR. MILLAN: Defendant's here.

5 THE COURT: Counsel for both sides are
6 present. The jury is out.

7 MR. MILLAN: Judge, I wanted to make what
8 is called an []Alford showing on Ms. Shirley. I don't
9 know if you remember Alford v. U.S., 1931 case.

10 THE COURT: I don't right off the top of
11 my head.

12 MR. MILLAN: Well, what was held in the
13 Alford v. U.S. case was that a proper cross-examination
14 question is where "do you live" to a person who is
15 incarcerated. And on its face it's an essential step in
16 identifying the witness in their environment.

17 The defense is entitled to show by
18 cross-examination that the testimony of the witness was
19 affected by fear or favor growing out of their
20 detention. And it's immaterial whether the person was
21 in custody as a result of their participation in the
22 transaction for which the defendant was indicted or for
23 some other offense.

24 It also says that it -- it supersedes any
25 limine. And if you -- if you look at the line of cases

1 from Alford, they go through Davis v. Alaska, 1974,
2 another supreme court case. And it's also been taken up
3 by the court of criminal appeals in multiple cases,
4 namely Parker v. Texas, 657 S.W.2d 137, Carmona versus
5 Texas, 698 S.W.2d 100. They stand for the proposition
6 that this -- that essentially the -- the -- this case
7 the Alford v. U.S. case, is the precursor to the 613(b)
8 rule, the motive and bias rule.

9 And I am allowed to question the person
10 with, if they're in custody, number one, where -- where
11 are they in custody and what are the circumstances of
12 that confinement. And the jury is allowed to, you know,
13 make whatever inference they want off of that based on
14 whether there's a motive for the person to []embraciate
15 themselves to the prosecution based on the circumstances
16 that they're in.

17 THE COURT: Okay. Just what are the
18 circumstances that -- that the witness is in? I
19 understand she's incarcerated and charged with something
20 unrelated to the defendant, but I don't know where it
21 happened. I don't know --

22 MS. DOYER: She's not incarcerated on
23 those charges anymore. She bonded out. The only reason
24 she's here incarcerated is for her subpoena bond. So if
25 that's the whole basis of the argument, that's

1 completely improper.

2 And everything in Davis v. Alaska, Irby v.
3 State, Carpenter, everything that came after that says
4 in order to even show that she has some type of -- of
5 vulnerable position with the State, you have to
6 establish that there's a causal nexus.

7 So her statement in court yesterday was
8 completely consistent with the statement that night. We
9 had an examining trial. Her testimony at the examining
10 trial -- nothing has change because of the fact that she
11 now faces some charges in Hays County, so he can't --

12 THE COURT: But the State felt it
13 necessary to put her in jail to ensure her appearance.

14 MS. DOYER: No. I put a subpoena bond on
15 it so that if she didn't come, I had another way to go
16 and find her. It had nothing to do with her being in
17 custody for these other charges.

18 THE COURT: I understand.

19 MR. MILLAN: She's in custody, Your Honor.

20 MS. DOYER: But that's not the standard.
21 The standard is --

22 MR. MILLAN: The State made just an
23 outright incorrect statement stating that her -- her
24 position hasn't changed from the date of the incident
25 until now. She -- the night -- or the date of this

1 incident, she -- she -- she did an affidavit of
2 nonprosecution. She said she didn't want to go forward
3 with this case. Now she's testifying and saying all of
4 these things.

5 MS. DOYER: She said she wasn't sure and
6 that she didn't know if she should do anything because
7 nothing had been done before, which is on the COBAN
8 statements which Mr. Millan has and was able to review.
9 That's been her position this whole time.

10 You have to show that there's a nexus
11 between what she's facing in some other county and how
12 it colored her testimony here. There's a case directly
13 on point, Carpenter, where there was an individual who
14 picks up federal charges later. And the court of
15 criminal appeals there said, hey, that's a different
16 jurisdiction and it happened after the fact. There is
17 no logical connection or nexus.

18 So my objection is not only does it not
19 meet the standards under the supreme court or court of
20 criminal appeals, it's also under 403 more prejudicial
21 than probative of anything and it's irrelevant.

22 MR. MILLAN: Judge, I think under 613(b)
23 it's -- it's -- it goes to motive. I think whatever
24 slight motive even would be admissible.

25 THE COURT: Where is it that she was

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1 charged?

2 MS. DOYER: Hays County.

3 MR. MILLAN: Hays County.

4 MS. DOYER: She was only arrested.

5 MR. MILLAN: Aggravated assault and --

6 THE COURT: I understand.

7 MR. MILLAN: -- and possession. It says
8 200 to 400 grams. Was it 200 to 400 grams?

9 MS. DOYER: It says first-degree drugs.

10 THE COURT: What is the nature of the
11 aggravated assault charge?

12 MR. MILLAN: Hitting people with a bat.

13 MS. DOYER: Somebody threw needles at her
14 and slammed her hand in the door and she hit somebody
15 with a bat allegedly.

16 MR. MILLAN: That's her version of it.

17 MS. DOYER: That's the conglomeration of
18 the allegations in the report.

19 THE COURT: Well, I don't think all of
20 those details are admissible. I just was trying to work
21 my way through this process at the moment. So is not
22 the affidavit of nonprosecution admissible?

23 MS. DOYER: From that night that she
24 didn't want to pursue charges? It would be, but he
25 asked her about that. I asked her about that and she

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1 admitted that.

2 THE COURT: I'm not recalling that.

3 MS. DOYER: I asked her if she wanted to
4 press charges that night and why it wasn't detailed in
5 her statement. She said no because nothing had ever
6 happened before, nothing had ever been done with it
7 before.

8 MR. MILLAN: The State objected to hearsay
9 on the statement.

10 MS. DOYER: But we still talked about it.
11 I'm just not seeing the connection or the -- or the
12 motive for her to curry favor with Comal County
13 authorities when she's being charged in another
14 jurisdiction and it's something that happened two weeks
15 ago.

16 THE COURT: Well, it's not really a
17 different jurisdiction. It's a different venue.

18 MS. DOYER: I have no authority over Hays
19 County. I have no ability to make any deals with her in
20 Hays County. I'm not Hays County. For her to testify
21 thinking that I'm going to get her a better deal in Hays
22 County, that's not --

23 MR. MILLAN: The State's subjective belief
24 in this regard has no bearing.

25 MS. DOYER: It's not a subjective belief.

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1 We're in different jurisdictions.

2 MR. MILLAN: And your objective belief has
3 no bearing.

4 MS. DOYER: The fact that I prosecute in
5 Comal County and she faces charges, which have not even
6 been filed in Hays County, has nothing to do with her
7 testimony yesterday.

8 MR. MILLAN: And Georganne Shirley has her
9 own mind.

10 MS. DOYER: But her subjective belief is
11 irrelevant as well. You can't --

12 MR. MILLAN: Exactly. Whatever she says
13 is actually irrelevant. I agree with you. What's
14 important is that the jury hear this and they can make
15 their own determination and you can argue one way or the
16 other on it.

17 MS. DOYER: What's important is that we
18 follow the law. And the law requires a plausible
19 connection or nexus between her pending charges in
20 another jurisdiction and how she testified yesterday.

21 MR. MILLAN: I believe it's plausible.

22 THE COURT: When she did, in fact, sign an
23 affidavit of nonprosecution, that does potentially
24 create a nexus. And I think there's some optional
25 completeness issues probably in regard to that

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1 affidavit. And once you went into them --

2 MS. DOYER: Whether she had signed an
3 affidavit or not, she would still be here testifying.
4 She's under subpoena.

5 THE COURT: But yet we had to go to the
6 extent to have her put in jail to ensure that she would
7 be here.

8 MS. DOYER: I didn't go to the extent to
9 put her in jail. I put bond on it to ensure that if she
10 didn't show up, I had another set of authorities that
11 could assist me in bringing her to court.

12 THE COURT: And she's apparently been
13 unable to make that bond.

14 MS. DOYER: But she's no longer in custody
15 for an aggravated assault charge or a drug case. So
16 this premise of I should able to ask her why she's in
17 custody, that completely blows out of the water.

18 MR. MILLAN: No, it doesn't, because the
19 reason that's she's taking -- the means by which you're
20 able to get that bond placed on her was based on the
21 fact that you were able to get her based on the fact
22 that she got picked up on these new charges.

23 MS. DOYER: Which has nothing do with --

24 MR. MILLAN: You were unable to get her
25 served with a subpoena until she got picked up on these

1 new charges.

2 MS. DOYER: Which has nothing do with the
3 Davis v. Alaska analysis. We're arguing about things
4 that have nothing to do with the law.

5 THE COURT: Well, I don't think you can go
6 into the details. I think you can obviously ask her
7 where she's residing and -- and whatever, but -- or that
8 she has recently been arrested just for whatever charges
9 and that's it in Hays County so that it's clear. That
10 it's a different venue.

11 MS. DOYER: I have a case directly on
12 point that you're not allowed to ask what the charges
13 are for. You can simply ask what the range of
14 punishment is. It's Johnson v. State --

15 THE COURT: Very good.

16 MS. DOYER: -- court of criminal appeals.
17 So he can't even ask her about the fact that it's an
18 aggravated assault.

19 MR. MILLAN: That's fine. But I can say
20 you're in custody on a first-degree and a second-degree
21 felony.

22 MS. DOYER: You can't, because she's not
23 on --

24 MR. MILLAN: It's the range of punishment.

25 MS. DOYER: She's not in custody on a

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1 first- or second-degree felony. Show me something. You
2 can't ask someone something if you don't have a
3 good-faith basis to believe it.

4 THE COURT: She has been charged --

5 MR. MILLAN: She's been charged with
6 offenses that have a range of punishment of two to 20
7 and five to 99.

8 MS. DOYER: I'm still objecting under 403,
9 401 and that this is completely abreast of the Davis v.
10 Alaska and subsequent case law.

11 THE COURT: Overruled.

12 MR. MILLAN: And, Judge, as to Mr. Nance,
13 he has a pending case from December 20th of 2015,
14 assault family violence, and guess who the complainant
15 is: Georganne Shirley. That case has been pending
16 since December of 2015, hasn't been filed by the State,
17 hasn't been rejected by the State.

18 MS. DOYER: It was filed.

19 MR. MILLAN: It was filed. So it's
20 pending?

21 MS. DOYER: Yeah. Yeah.

22 MR. MILLAN: Okay. So it's still pending.
23 I believe under 613(b) that that's absolutely
24 admissible, that -- if he's up here testifying as to
25 that -- as to the facts of this case, whatever the --

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1 that pending charge and the fact that it involves
2 Georganne Shirley, I think that Shirley creates a
3 potential motive one way or the other.

4 MS. DOYER: Okay. So why are we -- so the
5 defense is calling witnesses to the stand -- to the
6 stand for the defense to impeach them with a motive or
7 bias on their behalf?

8 MR. MILLAN: You subpoenaed him and you
9 were going to call him as a witness.

10 MS. DOYER: No, I wasn't going to call him
11 as a witness. I subpoena people all the time.

12 THE COURT: Fine. That's good.

13 MR. MILLAN: You said yesterday you were
14 going to call him.

15 MS. DOYER: I never said that.

16 MR. MILLAN: You told me yesterday you
17 were going to call him.

18 MS. DOYER: I did not. I don't have to
19 tell you my trial strategy.

20 THE COURT: He was supposedly an
21 eyewitness to this event, right, so he can --

22 MS. DOYER: He can call him, but not for
23 the purposes of impeachment. That's not allowed under
24 the law.

25 THE COURT: Very good.

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1 MR. MILLAN: I'm calling him as a fact
2 witness. But I also think that the motive of bias is
3 probably going to come up. I'm letting the Court know
4 and --

5 MS. DOYER: Okay. Motive or bias -- okay.
6 So when we're looking at Davis v. Alaska, it's does the
7 witness have a motive or bias to testify favorably for
8 the State.

9 So what he's going to do is call the
10 defense -- the defense witness, Gerry Nance, and then
11 ask him, hey, are you testifying for me because you have
12 a bias in favor of the State? That doesn't make any
13 sense.

14 MR. MILLAN: Judge, I will simply ask you
15 to look at Carmona v. State of Texas, 698 S.W.2d 100.

16 MS. DOYER: In that case the defense
17 called a defense witness and then cross-examined them
18 about motive or bias testifying in favor of the State
19 when the defense called them?

20 MR. MILLAN: No, because you -- you didn't
21 anticipate --

22 MS. DOYER: If it didn't, then it's not on
23 point.

24 MR. MILLAN: You anticipated what was --

25 THE REPORTER: One at a time, please, and

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1 everyone slow down.

2 THE COURT: While we're waiting on
3 somebody to show up, why don't you hand me whatever
4 cases y'all think are most relevant or most on point.
5 Thank you.

6 MS. DOYER: Your Honor, I found a court of
7 criminal appeals case -- let's put this on the record --
8 Murphy v. State, 587 S.W.2d 718.

9 THE COURT: In regard to what issue?

10 MS. DOYER: Defense witness being called
11 and then examine about his -- by his bias and --

12 THE COURT: Okay. Let me just deal with
13 the writ of attachment first.

14 MS. DOYER: Okay.

15 THE COURT: You probably need to get this
16 down to the clerk's office -- or we have them come down
17 here.

18 THE BAILIFF: I'll call.

19 THE COURT: I'm presuming that this "found
20 at" is just to assist law enforcement. Somebody is
21 going to have to assist them --

22 MR. MILLAN: Yeah.

23 THE COURT: -- to give them some idea
24 where to look.

25 MR. MILLAN: My understanding was that he

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1 may have been on-the-job in Corpus, but he was going to
2 be back here at 2:00.

3 THE COURT: I mean, my point is I -- I've
4 signed -- we'll get the clerk to issue it.

5 MR. MILLAN: Do you want me to take it
6 over to the clerk's office?

7 THE COURT: I think they're going to bring
8 somebody.

9 As to Mr. Nance, he's a fact witness?

10 MR. MILLAN: Yes, Your Honor.

11 THE COURT: He's present. He was
12 subpoenaed by the State. You indicated that you thought
13 they were calling him; correct?

14 MR. MILLAN: Yes, Your Honor.

15 THE COURT: Okay. I think we'll probably
16 just have to see where his testimony goes. I don't know
17 if he's going to contradict somebody else or --

18 MR. MILLAN: I'm just anticipating how
19 things go. I mean, I wanted to bring it up so that the
20 issue was, you know, in the Court's mind beforehand and
21 we weren't doing this yo-yo thing back and forth.

22 THE COURT: If his testimony per chance
23 ends up lockstep with what we've heard, then I don't
24 know if his pending charge is going to ultimately be
25 potentially relevant.

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1 Now, I mean, if there's some -- I don't
2 know. I mean, it may depend. That might make it more
3 relevant. I don't know. I don't know what he's going
4 to testify to.

5 MR. MILLAN: I don't either, Judge.

6 MS. DOYER: I just want -- if we get him
7 today, then I want to do a hearing outside the presence
8 of the jury.

9 THE COURT: Okay. And if we get him
10 tomorrow?

11 MS. DOYER: Same.

12 THE COURT: The same, okay.

13 And did I understand that Ms. Shirley,
14 that -- that she was also arrested that day?

15 MR. MILLAN: No.

16 MS. DOYER: No.

17 THE COURT: No. Was there --

18 MS. DOYER: No.

19 THE COURT: Okay. Well, if you've got all
20 13.

21 THE BAILIFF: Yes, sir, Your Honor.

22 (Jury enters courtroom)

23 THE COURT: You may proceed.

24 MR. MILLAN: Your Honor, may -- the
25 defense calls Gregory McClure.

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1 THE COURT: Officer McClure? Deputy
2 McClure?

3 MR. MILLAN: Deputy, sorry.

4 THE COURT: Let me get you to raise your
5 right hand.

6 (Witness sworn)

7 THE COURT: Thank you. Have a seat. And
8 you can tell if you get really close to that microphone,
9 it does a lot better job.

10 THE WITNESS: Yes, sir.

11 GREGORY MCCLURE,
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MILLAN:

15 Q. Morning, Deputy McClure.

16 A. Morning.

17 Q. Could you please state your name for the
18 record.

19 A. Gregory McClure.

20 Q. And I want to take you back to November 30th of
21 2015. Do you remember making a call to the 150 Eagles
22 Peak that day?

23 A. Yes, sir.

24 Q. Now, do you remember -- do you remember that
25 day?

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1 A. Yes, sir.

2 Q. Can you tell me what happened when you first
3 arrived at the scene?

4 A. I made contact with the caller, advised there
5 had been a disturbance in the residence.

6 Q. Okay. And did you approach the -- the
7 residence?

8 A. Yes. He gave us permission to go inside.

9 Q. Okay. And who -- who else was with you?

10 A. Deputy Sepeda.

11 Q. And did you all -- but did you all knock on the
12 door?

13 A. There was no door.

14 Q. Okay. It was a -- it was like a French door,
15 wasn't it?

16 A. No. There was sheet.

17 Q. Do you remember knocking at all before you went
18 in?

19 A. Into -- their bedroom was separate from the
20 kitchen area. We went into the home, which the
21 homeowner gave us permission to go into his home.

22 Q. Okay.

23 A. There was no knocking. There was loud music
24 playing. We announced ourselves as deputies.

25 Q. Okay. And -- and can you describe as you were

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1 entering into the residence going back towards the
2 bedroom what did you see?

3 A. Furniture everywhere, pretty messy.

4 Q. Did anybody else -- did you see anybody else in
5 the house?

6 A. Until we made the bedroom, no.

7 Q. Okay. What did you see when you -- when you
8 got to the bedroom?

9 A. Deputy Sepeda was in front of me. He was
10 saying hello, sheriff's office. A female came out, like
11 opened the curtain. I had just partial visual of the
12 bed -- or the room. She came out and was like, thank
13 you, and --

14 Q. Without getting into anything she said --

15 A. Okay.

16 Q. -- just what you saw.

17 A. Just a female and then a gentleman here laying
18 down on the bed.

19 Q. Okay. At some point did the -- did the
20 gentleman laying down on the bed, did he get up or did
21 he stay in the bed or what did he do?

22 A. The female came out first. And then Deputy
23 Sepeda was like, hey, wake up. Wake up. He got up out
24 of bed. He was fully clothed and he bent down and
25 started tying his shoes immediately.

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1 Q. Okay. And at that -- did he make any
2 movements?

3 A. He started -- we asked him to step outside the
4 bedroom into the kitchen area. He walked in front of
5 Deputy Sepeda and behind me.

6 Q. Okay. And -- and did you -- did you talk to
7 him?

8 A. I just asked him to remove his hands from his
9 pockets. He had his hands in his pockets. And then we
10 entered the kitchen area where he started walking
11 towards me and I kind of bladed off of him.

12 Q. And after that point, what happened?

13 A. I was kind of looking around. There were a
14 couple of knives in the kitchen. I didn't know who we
15 were dealing with or what the situation of the call was.

16 At that time he -- he kind of started
17 walking towards me. So I kind of side-stepped to move
18 away from him. He started getting close to me. And at
19 that time, Deputy Sepeda realized he's going to run. He
20 said he's going to run and he took off immediately as he
21 was saying it.

22 Q. Okay. And did you chase after him?

23 A. Yes, sir.

24 Q. How far did you chase after him?

25 A. I stopped at the doorway, hit something, a

1 Foosball table or something and then he tripped at the
2 doorway. I chased him down the street to the first stop
3 sign and he made a left on -- I can't remember -- sunny
4 something street name. And then an off-duty police
5 officer chased him down. He had maybe ten yards in
6 front of me and was able to stop him.

7 Q. Okay. And -- and at the -- at the point
8 that -- that you-all took him into custody, he was -- he
9 was -- would you say that he was in an excited --

10 MS. DOYER: Objection, leading.

11 THE COURT: Overruled.

12 Q. (BY MR. MILLAN) Would you say that he was in an
13 excited state of mind?

14 A. I mean, he seemed exhausted. He was running.
15 He ran about a good 200 yards, as much as I was.

16 Q. After you took him into custody, did he seem
17 angry?

18 A. At the beginning, yes.

19 Q. Was he agitated?

20 A. Yes. He started banging his head against my
21 Tahoe.

22 Q. Okay. And so he -- he was in an excited state;
23 right?

24 MS. DOYER: Objection, leading.

25 THE COURT: I mean, I think it's already

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1 pretty well-established, but overruled.

2 Q. (BY MR. MILLAN) Okay. And so while he was in
3 his state, did he -- did he tell you why he ran?

4 MS. DOYER: Objection, hearsay.

5 THE COURT: Overruled.

6 Q. (BY MR. MILLAN) Did he tell you why he ran?

7 A. He said he thought he had a warrant.

8 Q. Okay. Now, at some point did he calm down?

9 A. Yeah. After we picked him back up off the
10 ground, called EMS, he started to calm down. We gave
11 him some water.

12 Q. Why did you call EMS?

13 A. It's protocol. He ran. He was tackled by
14 another officer. He hit the ground. We have to check
15 him out, make sure he's okay.

16 Q. Did you witness any injuries on him?

17 A. Yeah. He had a laceration to his forearm --
18 and he refused medical attention at the time when they
19 got there -- and then whatever scrapes he might have got
20 from his knees when he hit the ground.

21 Q. What if -- did you notice any bite marks on
22 him?

23 A. No. He mentioned it. But at that time, from
24 him evading, I wasn't going to take off his handcuffs
25 and check for any other injuries. All I could see is

1 what EMS pulled up from his long-sleeved shirt.

2 Q. Did you do anything to memorialize the injuries
3 that he had, took photos, anything?

4 A. We -- we document photos. But due to his
5 behavior from running from us, I'm not going to take
6 that chance and take him out of handcuffs to document
7 anything like.

8 He was treated by EMS and he refused.
9 Then once they make down to the jail, they see medical.
10 They take over from there and they're supposed to
11 document any pre-existing injuries before they enter the
12 jail.

13 Q. Did you ask any questions of -- without getting
14 into anything that was said, did you ask Ms. Shirley
15 about the incident?

16 A. That's the victim? Is she the victim?

17 Q. The complainant, yes.

18 A. I didn't speak to her. I watched him the whole
19 time at my vehicle.

20 Q. Okay. So your job was to be watching Derek
21 Porter; is that right?

22 A. I took over that -- or I assumed that position.
23 I placed him in custody for evading and held him in my
24 vehicle until he interviewed her.

25 Q. So in your role, I mean, are you supposed to --

1 to -- to help gather evidence for -- for a case like
2 this also in -- with the role that you were in as the
3 officer at the scene?

4 A. As far as -- I don't understand the question.

5 Q. Is part of your role in being an officer at a
6 scene like this to gather evidence?

7 A. Yeah, or -- what I was -- where I was at, yeah.
8 I mean, I -- I did what I did and -- and stayed with him
9 at the vehicle and detained him while the other deputy
10 interviewed the victim.

11 Q. And you actually were in control of Derek
12 Porter. You had him the entire time up until he -- you
13 went to the station house; is that right?

14 A. Yeah. I mean a couple of times I might have
15 walked from my vehicle.

16 Q. Now, EMS came to the scene at 150 Eagles Peak;
17 is that right?

18 A. Yes, sir.

19 Q. And did you witness them treat -- any treatment
20 of Derek Porter by EMS?

21 A. I stood by while they treated him for whatever
22 injuries he had. I know that he was bleeding from some
23 pre-existing injury. And he said he didn't want any
24 treatment. I asked if they wanted to put gauze on it or
25 pack it because it was bleeding. He was wearing a white

1 sweater and it was bleeding.

2 Q. You said he didn't want treatment; right?

3 A. Yeah, he refused treatment.

4 MR. MILLAN: May I approach the witness,
5 Your Honor?

6 THE COURT: Yes, sir.

7 Q. (BY MR. MILLAN) I want you to look at number 11
8 and read number 11 to yourself, the whole paragraph.

9 A. Yes, sir.

10 Q. Okay. May I have that page back, please?

11 A. Okay.

12 Q. According to your report, EMS felt that the
13 wound was too deep to treat; is that right?

14 A. Yes.

15 Q. So it wasn't just necessarily that he didn't
16 want to be treated. It's that they -- EMS didn't feel
17 that they could treatment him; right?

18 MS. DOYER: Objection, leading.

19 THE COURT: Overruled.

20 A. I can't answer that. I'm not medical
21 personnel.

22 Q. (BY MR. MILLAN) You put it in your report,
23 didn't you?

24 A. That he was -- had a laceration, yes.

25 Q. And that EMS said it was too deep to treat;

1 right?

2 A. Yes.

3 Q. So after that you -- you took Derek Porter to
4 the -- to the jail; is that right?

5 A. Yes.

6 Q. Without getting into anything that Derek Porter
7 said, did you ask him about the incident and what
8 happened?

9 A. As far -- I didn't know what had happened.

10 Q. Okay.

11 A. My whole job was to watch him.

12 Q. So you didn't do any investigation to determine
13 whether -- based on those injuries, how they got there
14 and whether somebody was at fault for them?

15 A. That was the other deputy's job that was
16 interviewing her. And they came to the conclusion that
17 there was assault involved and those charges were added
18 on. I'm not the reporting office who took all of them.

19 Q. And that was Sepeda; correct?

20 A. And Deputy Bailee, I believe.

21 Q. And did you ever Sepeda talking to Derek
22 Porter?

23 A. Yes.

24 Q. Okay. You're saying he took Derek Porter's
25 statement?

GREGORY McCLURE - JUNE 6, 2017
Direct Examination by Mr. Millan

1 A. No. He came and talked to him after that -- at
2 the vehicle where I was at.

3 Q. And then after that, did you -- what did you do
4 with Mr. Porter after EMS left?

5 A. I -- we waited while they interviewed the
6 victim. I gave him water a couple of times. He was out
7 of breath, so I kept giving him water. And I took
8 him -- transported him to the jail.

9 Q. Okay. Would the jail accept him?

10 A. No. I told them he had a laceration that he
11 had on his forearm. They said it was too deep -- or
12 they told me they couldn't treat it. So I took him to
13 the -- I think it was Resolute and they treated him as
14 Resolute.

15 Q. And this whole time -- so you're going back to
16 the jail. They're telling you that the cut is too deep.
17 You never thought, maybe I should take a picture of this
18 cut?

19 A. Not -- like I said before, he evaded from me
20 from the beginning. He was irate, banging his head on
21 my Tahoe. I'm not going to take the chance of taking
22 him out of handcuffs.

23 Q. Was he in handcuffs when he was at Resolute?

24 A. If they did, we put them in the front.

25 Q. If they did, but you don't remember whether he

1 was in handcuffs or not?

2 A. Sir, that's two years ago. I can't tell you if
3 I put them towards the front or not. Depending on his
4 behavior if I let them -- if I took them off to treat
5 him, I don't know. It might have just been one handcuff
6 while they X-rayed it. I think they took an X-ray.

7 Q. And do you remember what the X-ray showed?

8 A. I didn't look at the X-rays. I just know that
9 they told me there was something wrong with his elbow.

10 Q. Okay. And he actually had to -- did you notice
11 how they treated his injury?

12 A. No. I just stand by and make sure nothing
13 happens.

14 Q. Did you see anything on his arm after they got
15 through with it?

16 A. Just the cut that I saw before.

17 Q. Did you -- you didn't see the treatment put on
18 the cut?

19 A. No. I just know that they treated his
20 injuries. I don't know what they did to it.

21 MR. MILLAN: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes, sir.

24 Q. (BY MR. MILLAN) I'd like you to read number 14
25 to yourself.

1 A. Okay. Like I said, I haven't seen this in
2 almost two years.

3 Q. I understand. Based -- I mean, do you
4 recollect now what was on his arm?

5 A. Yeah, they put a splint. I mean, I wrote that
6 in my report --

7 | Q. Okay.

A. -- and bandaged it.

9 MR. MILLAN: Pass the witness.

CROSS - EXAMINATION

11 BY MS. DOYER:

12 Q. Deputy McClure, what led you to believe it was
13 a pre-existing injury as far as what you observed?

14 A. It was -- it wasn't bleeding. You know, it
15 looked like it was dried-up blood on it. It looked like
16 it had been trying to heal but reopened. It was in a
17 bad spot where it bends a lot.

18 MS. DOYER: Pass the witness.

REDIRECT EXAMINATION

20 BY MR. MILLAN:

21 Q. Without getting into what was said, what -- do
22 you remember whether Mr. Porter said what the source of
23 the injury was?

24 MS. DOYER: Objection. That calls for
25 hearsay.

GREGORY McCLURE - JUNE 6, 2017
Redirect Examination by Mr. Millan

1 MR. MILLAN: No.

2 THE COURT: Overruled.

3 MS. DOYER: It's back-door hearsay.

4 Q. (BY MR. MILLAN) Without getting -- do you
5 remember what he said what the source of the injury was?

6 A. That she cut him.

7 MR. MILLAN: Pass the witness.

8 MS. DOYER: No further questions.

9 THE COURT: Thank you. You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: Next witness?

12 MR. MILLAN: Georganne Shirley,
13 Your Honor.

14 THE COURT: Where is she?

15 THE BAILIFF: She is in the hallway.

16 THE COURT: If you'll just return to the
17 stand, please, ma'am. And do get closely to the mike,
18 if you would. Recall that you are under oath.

19 Mr. Millan?

20 You remain under oath. Thank you.

21 THE WITNESS: Okay.

22

23

24

25

GEORGANNE SHIRLEY - JUNE 6, 2017
Direct Examination by Mr. Millan

1 GEORGANNE SHIRLEY,
2 having been previously duly sworn, testified as follows.

3 DIRECT EXAMINATION

4 BY MR. MILLAN:

5 Q. Good morning, Ms. Shirley.

6 A. Good morning.

7 Q. Where are you residing right now?

8 A. Excuse me?

9 Q. Where are you residing right now?

10 A. 987 -- 975 Palomino Drive in Kyle, Texas.

11 Q. Where did you sleep last night?

12 A. I slept at the Hays -- at the Comal County as
13 a -- on a bench warrant.

14 Q. Okay. And -- and you're bench warranted for
15 this case; is that right?

16 A. Yes.

17 Q. And as of now, you have pending charges in Hays
18 County for a charge that has a range of punishment of
19 five to 99 years and a charge -- a case that has range
20 of punishment of two to 20 years; is that correct?

21 A. I'm not really sure.

22 Q. Okay. But if I told you that, would you -- do
23 you have any reason to deny that?

24 A. No.

25 MR. MILLAN: Pass the witness.

1 CROSS-EXAMINATION

2 BY MS. SHIRLEY:

3 Q. Ms. Shirley, those charges that are pending in
4 Hays County, you and I have discussed those charges;
5 right?

6 A. Yes.

7 Q. And you understand I don't have jurisdiction in
8 Hays County?

9 A. Yes.

10 Q. You understand that nothing has been promised
11 here to you in exchange for your testimony against the
12 defendant?

13 A. Yes.

14 Q. Those charges, did they arise after the
15 incident with Mr. Porter you testified about yesterday?

16 A. Yes.

17 Q. Is everything that you told this jury yesterday
18 about what happened to you the truth?

19 A. Yes?

20 MS. DOYER: Pass the witness.

21 MR. MILLAN: No further questions.

22 THE COURT: Okay. You can step down.

23 MS. DOYER: Can this witness be excused at
24 this time?

25 MR. MILLAN: I'm going to say subject to

GEORGANNE SHIRLEY - JUNE 6, 2017
Cross-Examination by Ms. Doyer

1 re-call because I have no idea where this thing is
2 going, Your Honor.

3 THE COURT: Okay. Very good.

4 You may step down.

5 MR. MILLAN: Your Honor, at this time we'd
6 call Gerard Nance.

7 May we approach, Your Honor?

8 THE COURT: You may.

9 (At the bench, on the record)

10 MR. MILLAN: He may be my last witness,
11 so --

12 THE COURT: Who -- who informed him he
13 could go to Corpus Christi?

14 MS. DOYER: No one.

15 THE COURT: Well, he's been subpoenaed to
16 be here this week --

17 MS. DOYER: Yes.

18 THE COURT: -- by the State; right?

19 MS. DOYER: He was subpoenaed, yes.

20 THE COURT: Has anybody been able to make
21 any contact with him by phone --

22 MS. DOYER: Not that I'm aware of.

23 THE COURT: -- text or anything?

24 I mean, do you have reason to believe -- I
25 don't know, did he make a statement, give a written

GEORGANNE SHIRLEY - JUNE 6, 2017
Cross-Examination by Ms. Doyer

1 statement?

2 MS. DOYER: He did.

3 THE COURT: Is there some indication about
4 this fight, this cut or whatever --

5 MS. DOYER: No.

6 THE COURT: -- that he may or may not -- I
7 don't know. What's in the statement?

8 MR. MILLAN: Judge, the fact that he was
9 in the house, he was right -- real close to where
10 supposedly the incident took place and did not see any
11 physical altercation whatsoever.

12 THE COURT: Where did this alleged cut
13 come from?

14 MS. DOYER: Two weeks prior.

15 MR. MILLAN: Well, there was a bite mark
16 on the arm from the same day.

17 THE COURT: Okay. But I'm talking about
18 the cut.

19 MS. DOYER: It is not from this incident.

20 MR. MILLAN: He told me -- he told the
21 police that she cut him from a previous incident.

22 THE COURT: Okay. On a previous incident.

23 MR. MILLAN: Yeah, but she could have been
24 charged.

25 THE COURT: But we don't know where it

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Cross-Examination by Ms. Doyer

1 was?

2 MR. MILLAN: I'm sorry?

3 THE COURT: We don't know when or where
4 that happened.

5 MR. MILLAN: Same house.

6 THE COURT: Okay. I thought she testified
7 yesterday that was the first time he had been there, or
8 he just showed up unannounced or something.

9 MR. MILLAN: I'll double-check on that,
10 Judge, but I thought it was at 150 Eagles Peak. It
11 might have been a different address.

12 THE COURT: I thought they had broken up
13 two weeks prior.

14 MS. DOYER: There are some serious issues
15 with his version of events as far as the timeline is
16 concerned.

17 THE COURT: And so this guy is only going
18 to be able to testify about what's in his statement. It
19 has nothing to do with the potential cut or anything?

20 MR. MILLAN: I mean, Judge, he heard the
21 sounds. He called 911.

22 MS. DOYER: But not from this -- this
23 alleged cut that --

24 MR. MILLAN: We don't know. We don't
25 know. I mean, I haven't gotten into detail on this --

GEORGANNE SHIRLEY - JUNE 6, 2017
Cross-Examination by Ms. Doyer

1 on crossing this guy. The only thing I've heard is what
2 he testified to at the examining trial and that wasn't
3 much.

4 MS. DOYER: Because he has an observation,
5 his estimate --

6 MR. MILLAN: Well, Esman could have gone
7 into more detail, but whatever.

8 THE COURT: So Mr. Esman, I take it,
9 represented your client previously?

10 MR. MILLAN: He got off the case and then
11 I got the case.

12 THE COURT: I'm just trying to ascertain
13 exactly what is this guy potentially going to testify
14 about.

15 MS. DOYER: That's why I didn't call him.

16 THE COURT: Yeah, but -- I mean, he needs
17 to know from the State's behalf that -- I mean, if he's
18 been subpoenaed by the State, he needs to be readily
19 available and not --

20 MS. DOYER: I'm sure that was
21 communicated --

22 THE COURT: -- away.

23 MS. DOYER: -- to him.

24 THE COURT: I mean, even if you decide not
25 to call some witness, they need to be within -- they

GEORGANNE SHIRLEY - JUNE 6, 2017
Cross-Examination by Ms. Doyer

1 need to know ahead of time. If they've been subpoenaed,
2 they need to be within 30 minutes or so of the
3 courthouse.

4 MS. DOYER: We tell all of our witnesses
5 that.

6 THE COURT: I mean, I think the best thing
7 to do is send the jury home for the day and let them go
8 on about their business.

9 MR. MILLAN: That's fine, Judge.

10 THE COURT: I mean, the only other
11 alternative is just for us maybe to call them between
12 2:00 and 3:00 and let them know if we can finish today,
13 but -- well, do you want me just to send them back and
14 let Adam ask them if they would rather be back at 9:00
15 or kind of be on hold until 2:00 or 3:00 --

16 MR. MILLAN: Up to you, Judge.

17 THE COURT: -- to see if there is a
18 consensus. Do you refer that I do it from the bench or
19 just let Adam do it?

20 MR. MILLAN: My concern is if we tell them
21 to come back at 2:00 or 3:00, they might not be able to
22 get him here.

23 THE COURT: I'm going to say that we can
24 call them between 2:00 and 3:00 --

25 MR. MILLAN: To let them know to come back

1 if --

2 THE COURT: -- or just stand down until in
3 the morning. Would you rather me just have them stand
4 down until in the morning?

5 MR. MILLAN: We have 13 people. Having
6 them on call, I would rather have them stand down until
7 morning because of the uncertainty.

8 THE COURT: Any objection?

9 MS. DOYER: I'm going to check with Amber
10 really quick before you do that.

11 THE COURT: Okay.

12 (At the bench, concluded)

13 THE COURT: Ladies and gentlemen, rather
14 than keep you back here cooling your heels or anything
15 of that nature, there is a witness that has been
16 subpoenaed that -- that we are doing our best, including
17 assistance through law enforcement, to get him here,
18 and -- but I'm not going to keep you just sitting here
19 on pins and needles so to speak.

20 So what I'm going to do is just recess
21 this matter. I had one option that I was thinking maybe
22 we'd call y'all between 2:00 and 3:00. But rather than
23 just kind of keeping y'all on hold this way, if you want
24 to go about your business this afternoon, you may and
25 we'll just come back at 9:00 in the morning.

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1 I need you just to be mindful of your
2 admonitions not to do any drive-bys, not to do any
3 independent investigation and not to talk with anybody
4 about anything to do with this offense. Stay off the
5 Internet, et cetera, regarding this case at least.

6 I trust everybody will be mindful of those
7 admonitions and we'll just see y'all in the morning at
8 9:00. Thank you.

9 (Proceedings adjourned)

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GEORGANNE SHIRLEY - JUNE 6, 2017
Cross-Examination by Ms. Doyer

1 STATE OF TEXAS

2 COUNTY OF COMAL

3

4 I, Cindy Cummings, Official Court Reporter in and
5 for the 433rd District Court of Comal, State of Texas,
6 do hereby certify that the above and foregoing contains
7 a true and correct transcription of all portions of
8 evidence and other proceedings requested in writing by
9 counsel for the parties to be included in this volume of
10 the Reporter's Record in the above-styled and numbered
11 cause, all of which occurred in open court or in
12 chambers and were reported by me.

13 GIVEN UNDER MY HAND, this the 9th day of August,
14 2017.

15 /s/ Cindy Cummings

16 Cindy Cummings, Texas CSR 3210
17 Official Court Reporter
18 433 Judicial District Court
19 150 N. Seguin Street
20 Suite 317
21 New Braunfels, Texas 78130
22 Tel 830-221-1279
23 Fax 830-608-2030
24 Expiration: 12/31/17

25